IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 809 OF 2001

IN

LONG CAUSE SUIT NO. 1658 OF 1986

Meher Manekji Anklesaria ... Appellant
(Orig. Defendant)

Versus

Godrej & boyce Mfg. Co. Ltd. & Anr. Respondents
(Orig. Plaintiffs)

Mr. Snehal Shah with Ms.S.T.Shaikh and Ms.Gayatri i/b. S.K. Srivastav & Co. for the appellant.
None for the respondents.

CORAM: D.K.DESHMUKH &
J.H.BHATIA,JJ.
DATE : 29th August, 2007.

P.C.

1. This Appeal is filed by the original defendant. It is directed against the Judgment and decree dated 3.3.2000 passed by the learned Single Judge of this Court in Suit No.1658 of 1986. The learned Single Judge decreed the suit for damages in the absence of written

statement filed. The respondents, who are original plaintiffs, have been served, but none appears for the respondents. The matter was called yesterday, but none appeared for the respondents.

2. We have heard learned Counsel for the appellant and perused the records. Perusal of the record shows that the suit was for damages which was filed by the plaintiff Nos. 1 and 2. Plaintiff No.2 which is Insurance Company has already paid the amount to the plaintiff No.1. Therefore, decree for damages has been passed in favour of the plaintiff No.2 only. Perusal of the judgment and decree impugned shows that it does not indicate as to how the figure of the damages was arrived at. It was also submitted that the written statement was actually tendered before the learned Single Judge, but it was not taken on record.

3. In our opinion, taking over all view of the matter, specially considering that the judgment has been rendered in the absence of written statement, the following order would meet the ends of justice :-

(i) The Judgment and Decree impugned in the Appeal is set aside. Suit No.1658 of 1986 is remitted back to the learned Single Judge for hearing and decision in accordance with law. The

Written Statement tendered by the defendant is accepted.

(ii) The Office shall place the suit for further orders before the appropriate Court

(iii) This Order is subject to the condition that within a period of four weeks from today the appellant pays to the plaintiff No.2 an amount of Rs.25,000/- as costs of this Appeal and also deposits in this Court, with due notice to the plaintiff No.2, an amount of Rs.1,00,000/- without prejudice to his rights and contentions. The amount on being deposited shall be invested in fixed deposit in a Nationalised Bank to the credit of the Suit.

(iv) In case the amount of costs and the amount of Rs.1,00,000/- is not paid and deposited, as directed above, Office shall treat this Appeal as dismissed.

Appeal disposed of.

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(D.K.DESHMUKH,J)

(J.H.BHATIA,J.)